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Lord Chancellor. }
 Lord Chief Justice Hyde. }
 Lord Chief Justice Bridgman. }



Jovis xxi. die Januarii Anno Regni Caroli Secundi Regis 15°. Inter Robertum Roberts Armigerum Fil. et Hered. Dom. Johannis Roberts, et Saram uxorem ejus, et Carolum Bodvell Roberts Infant' Fil. secundum diem. Robert. et Sar. ex predict. Robertum Patrem ejus et proximum Amicum, Querentes: Richardum Wynne Barr'. Thomam Dayrell Mil. Thomam Wynne Ar. Griffith Wynne, Thomam Bodvell, Timotheum Pollard, Thomam Pugh, Richardum Edwards, et Edwardum Griffith,
Defendentes.

THis Cause having on Tuesday the 19th instant, yesterday, and this day received a Hearing before the Lord High Chancellor of England, assisted with the Lords Chief Justices of the Kings Bench, and Common Pleas, in the presence of the Council Learned on both sides: The Scope of the Plaintiffs Suit being to be relieved against a pretended Writing purporting the Last Will of John Bodvell Esq; deceased, Father of the Plaintiff Sarah, which was gained from him by the fraud and practice of the Defendant Thomas Wynne, with the help and confederacy of the other Defendants Pollard, Pugh, and Griffith, to disinherit the Plaintiff his only Surviving Daughter and Heir, of a great Estate in Lands lying in the severall Counties of Carnarvan, Anglesey, and Merreioneth in Wales, and to settle the same on the two Defendants Griffith Wynne Son of the Defendant Thomas, and Thomas Bodvell, both Infants. It appeared, That the said John Bodvell deceased, being seized of the Estate before mentioned, did upon his Intermarriage with Anne the Daughter of Sir William Russell, and in consideration of a Portion of 5000 l. which she brought him, settle the said Estate on himself and the Heirs Male of him the said John, on the Body of the said Anne to be begotten, with remainders to the right Heirs of the said John, who dying without Issue Male, the Estate by virtue of the said Settlement would have descended to the Plaintiff Sarah, the sole Surviving Daughter and Heir of the said John Bodvell, with whom the Plaintiff Mr. Roberts did in December 1657. intermarry, and had Issue by her two Sons, and two Daughters, in the Life-time of the said John Bodvell, who (as appeared by the Proofs now read) to manifest his approbation of, and satisfaction in, the said Match, did upon the Birth of the second Son of his Daughter by the Plaintiff, become Godfather to the Child, and gave him the Name of Charles Bodvell Roberts, expressing his great Joy and Comfort in his Daughters so happy choyce and noble intermarriage; And that therefore to evidence his good liking thereof, and complacency in the Birth of the Child, he had given the Plaintiff Charles Bodvell his own Name, to the intent he might (as he was resolved to do) make him his Heir, and continue the Estate in his Name, saying, He should be more a Bodvell than a Roberts: And to that end, would take upon him the Charge and Care of his Education in Wales, where his Estate (which he designed to the said Charles Bodvell Roberts) did lye; And presented the said Sarah at the Christning with severall Pieces of Plate to the value of 50 l. at the least, Declaring, That though his elder Brother might have a greater Estate; yet his Boy Charles should not need to be beholding to him; for he resolved to make him his Heir, and that he should keep up his Name and Family in Bodvell; And would have him bred in Wales, and learn that Language, and did treat with Nurses and Servants for that purpose; further promising, That if Mr. Roberts and his Wife would go into Wales to live, he would at present part with his chief Seat and Lands to them; and sent to the Lord Privy Seal to settle some Estate on his Sonne: And to induce his Lordship to make such Settlement, did promise that he would settle all his Estate, so that after his decease it should come to his said Daughter Sarah and her Heirs. And the Lord Privy Seal upon this Declaration and Promise of Mr. Bodvell, was induced, and did by Conveyance Inrolled the 27th of September 1660. settle a very fair Estate near 3000 l. per annum upon the Plaintiff Roberts and his Issue on the Body of the said Sarah begotten: And Mr. Bodvell thereupon in August 1660. caused his Will to be made, whereby he gave his whole Estate to Sarah for life. with Remainder to her Son Charles in Tail, and made the Plaintiff Sarah Sole Executrix, and the Lord Privy Seal

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and others Overseers; which Will he gave to Mr. Rowland Lewis his Apothecary to keep safe, who kept the same untill April following. It being also fully in proof, That both before and after the making such Will, he would often Visit and receive Visits from his Daughter, and did often invite the Plaintiffs to Banquets and entertainments; and was so passionately affectionate to her, that he would often weep for joy at the sight of her, and would upon all occasions declare, she was the most Dutifull and obedient Child in the World, and one that had never offended him in her whole Life; And did severall times after the Will made, when she had been newly gone from him, break out into Expressions to this Effect, My dear Daughter Sarah, what shall I do for her? Nay, what can I do more for her than I have done by my last Will? And to the end the same might not be stifled or concealed, Mr. Bodwell in September 1661. being then Sick, sent for Richard Jones Esquire, from Wandsworth, and told him he had made such a Will, and prayed him to remember and divulge it if he dyed. And February 1661. April 1662. and June 1662. he told Mr. Salisbury, and Mr. John Lewis, (who kept the said Will by Bodwells direction, for six weeks after Mr. Bodwell took the same from Rowland Lewis) and Mr. George Farnwell, that he had made his Will as aforesaid, desired them to remember it, professing he would never alter it. And although he did in July following, levy Fines of all his Estate, yet it was not with the least thought or intention of revoking his Will, or to dis-inherit his Daughter: For when report had been spread to that purpose, he did utterly protest against it, and declared in the presence of severall persons, and as often as mention was made of this matter, that he would not give one foot of Land away from his Daughter Sarah, and his Grand-sonne Charles Bodwell, saying, God forbid any endeavours which have been used, should take off my affection to my innocent Daughter, and Grand-child, and adding with teares, he should be worse than a Beast, or a Devil, if he did it; but did aver to Mr. Parrey, in the presence of Mr. Pollard, in August 1662. to John Wynne Esquire, about October 1662. to Doctor Deawry, in November 1662. that he had no other meaning by levying those Fines, than to prevent the malice of his Wife, in case she should attempt (as it was then reported she did design) to set up some Issue male to the prejudice of his Daughter. And did send to the Lord Privy Seal, and Mr. Roberts, to contradict such false Reports of his intention, to dis-inherit his Daughter; neither was there any Reason or probability he should do it, to make way for the Defendant, Wynne and his Sonne, or the other Defendant Bodwell, not onely in regard they were strangers, but for that it did appear by the proofs, that he had a continued enmity and dis-affection towards Mr. Wynne, for the space of twelve years before, and almost untill the time of his death, made no use of him in the time of his troubles and Sequestration; nor was he helpfull to him in taking off the said Sequestration, or furnishing him with money, but was by Bodwell then looked on, Not onely as one that was a necessitous cunning person, and a hanger on, and burthen to him, as he then declared, but also afterwards, often complained that he was one, that not onely he himself suspected, but of whom the Lady Bodwell his Mother had great suspicion, and gave him warning to have a care of, as one whom she feared had a design upon him, and did watch an opportunity of cheating him of his Estate: which said design and intention, it appeared by Mr. Parries deposition, the said Thomas Wynne had twelve years together before Bodwells death. And to evidence how great a displeasure Mr. Bodwell had towards Mr. Wynne, being for five years before his death often solicited to exchange a few Acres of Land with him, he could not be prevailed with to do it; His answer being alwayes, Hang him old fool, and coverous Coxcomb, I think the Rogue would quarter me alive, but I will starve, and see my Estate at the Devill, before he shall have a foot of it; and to prevent all occasions of being seduced by him, did forbid him to come into his presence, and charged the Servants to shut him out of doors. And if by chance Mr. Wynne had got into the Room, Mr. Bodwell would usually say to his Servants, why did you let this old fool in, he never comes for good; and hearing that Mr. Wynne had reported he should be his Heir, he did reproach him with many vile and infamous termes of beggery, impudence and knavery, repeating the same expressions, that he should be thought worse than a Beast, if he should give away his Estate from his own flesh and blood; and that Wynne should be hang'd before he, or any of his, should have a foot of it. And it further appeared, that in the year 1661. Mr. Bodwell falling sick of a violent Feaver, which wrought so upon his Brain, that from that very time to his death, he was very weak both in body and minde, and much declined in his memory and understanding. And although he were at sometimes of better temper and disposition than other, yet he was generally distempered, and used many unruly and extravagant Actions, and Mr. Wynne thinking to take advantage of his weakness, and distemper, did severall times endeavour to insinuate into his Company, but was alwayes repulsed, and prevented, untill about June 1662. when Mr. Bodwell being arrested for debt, and in the hands of Bayliffs,

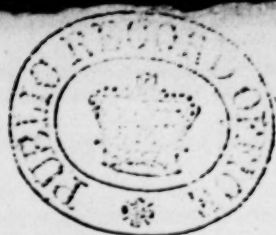
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Bayliffs, Mr. Roberts with another person, hearing thereof, and coming with an Intention to buy him, the Bayliffs severall times denied that they had any such person; And after some threats and disputes, Mr. Roberts being admitted to see him, he found the Defendant Mr. Wynne there, and was then told, the work was done, for Mr. Wynne had bayled him already, and after the said Wynne as is alleaged, became bound with Mr. Bodvell, in a Statute or Recognizance of 1000 l. for securing 500 l. which was borrowed for Mr. Bodvell, of Mr. Humphries: But Mr. Bodvell gave him a Recognizance of 1200 l. for his Counter-security, to save him harmless against that Engagement. And Mr. Wynne having now insinuated himself by meanes aforesaid, into Mr. Bodvells Company, that he might compass his Designs, did endeavour to withdraw his affections from Mr. Roberts, and the Plaintiff Sarah; and to bring them into his displeasure, perswaded him that they had procured the Arrests, and joyned with his Wife against him, and affirmed, he could prove it, which he hath also endeavoured to do by examination of severall Witnesses in this Cause to that purpose, but hath not made out the least proof of it; yet having by this means insinuated himself with Mr. Bodvell, to the end, he might keep the Plaintiffs from knowing where he was, or having access to him; he did importune and prevail with the said Mr. Bodvell, to turn away his too old Servants, John Lewis and William Morris, and in their stead, to entertain the Defendants Pugh, and one Edwards his Kinsman, intimates of the said Wynne; and then Pugh did manage Mr. Bodvells Concealment, and conducts him first to Lambeth, where they lay one Night, and the next day to Hounsditch, and from thence to Islington, where Pugh had hired for him a very mean Lodging, where they continued for the most part, from June 1662. till January following; Mr. Bodvell by the name of Smith, and Pugh by the name of Old Jackson: In which time, neither the Plaintiffs, nor any of his Relations, had any access to him, nor any other but the Defendant Wynne and Pollard, and one Henry Tadolove, who were frequently there; and when they came great secrecy was used, and all other Attendants put out of the Room, or if any Person were by that could not conveniently be removed, then they discoursed in Welsh with Mr. Bodvell, who having received in November 1662. a great Braine and Hurt by a Fall; and Pugh applying himself to Mr. Wiseman, the Chirurgeon, for his Cure, by the name of one Smith a Gentleman, who lay at Finchley; and the implasters which were sent not proving effectual, but there being necessity to have Mr. Wiseman come in person, Pugh did then acquaint him, that although he had told him of a Gentleman of a strange Name that lay at Finchley, yet in truth his Name was Bodvell, and he lay at Islington, but it was a great Secret: and under the obligation of secrecy, Mr. Wiseman was admitted to come to him; and it appear'd, That Mr. Bodvell in the month of December 1662. even in the very time and day when the Will which the Defendants would set up is said to be made, and first published, did by reason of his hurt and Sicknes that ensued thereupon, lye in great anguish and extremity, and for the most part in a very miserable and disorderly Condition; but after he began somewhat to Recover, and had the beginning of January, One Thousand Six Hundred Sixty Two, turned away old Pugh for a Knave; Mr. Wynne did then place with him one Ellis Jones, a Servant of his own, in the Room of Pugh, charging him not to discover Bodvell's Lodging to any person living, and soon after Mr. Wynne did provide new Lodgings for Mr. Bodvell, at the House of one Mr. Cletheroe in Black-Fryars, but still with the same Caution and Care to conceal him; for having been there almost seven Weeks, his Name was not known, nor any of the Plaintiffs, nor any of his Relation had any Notice or Knowledge where he was, except Wynne and some others that did confederate in his Concealment, untill such time as he fell sick of the Disease of which he dyed; in which time he sent Ellis Jones, and one Richard Terrey, with several Letters to Mr. Parry of his acquaintance to come to him; but the said Thomas Wynne expressly charged the said Richard Terrey not to tell the said Parry where Mr. Bodvell's Lodging was, and yet was so far from having any confidence or assurance in the pretended Will of the Twentieth of December, One Thousand Six Hundred Sixty Two that during the time of Mr. Bodvell's Concealment in Black-Fryars, meeting Mr. Parry in February, One Thousand Six Hundred Sixty Two, he did endeavour to draw Mr. Parry to a Combination with him, to gain a Settlement of the Estate from Mr. Bodvell, saying, Come Mr. Parry, you and I are of Kin to Mr. Bodvell, why should we suffer such an Estate to be lost, and get none of it; with other perswasions to that purpose: But Mr. Parry refusing to comply therein, saying, There was an Heir at Law, to whom the Estate did of Right belong; Mr. Wynne to make the best improvement and advantage of the pretended Will, did on the Nineteenth of March last (being but ten dayes before Bodvell's Death, and the time of the second publishing of the Will) cometo the said Mr. Bodvell, and brought with him from remote Places three persons (to wit) William Wainsford, Ralph Platt, and the Defendant Edward Griffith, Wynnes own man, whom he designed for the Witnesses



to the second Publication, all strangers, and unknown to Mr. Bodvell, and put the Paper purporting the Will into Mr. Bodvells Hands, of which Paper the said Mr. Bodvell, as the Witnesses depose, having read a little part of the beginning, and some few lines in the Close, did publish the same, and the Witnesses set their Names thereto; but *William Waindsford* swears *Bodvell* was then weak, that for fear of disturbing him, he moved, That they might go into an other Room to set their Hands as Witnesses; and all of them Swear, they never saw Mr. Bodvell before nor after, and did not stay there above a quarter of an hour, and knew not till then what they went about, and that Mr. *Wynne* gave them half a Crown to Drink; but do differ in their Depositions, one swearing it was in the same Chamber where Mr. Bodvell lay, they put their Names to the Will; and another, it was in a Room below Stairs; and it appears, That Mr. *Roberts* having during the time of Mr. Bodvells Concealment, sent to Mr. *Wynne*, to desire him to know where he was, That he might see him, the Defendant *Wynne* alwayes denied to discover his Lodging; But returned this Answer, That if Mr. *Roberts* could make it appear, Mr. Bodvell had a desire to see him, he would bring Mr. *Roberts* to him; and Mr. *Roberts* having some intimation of Mr. Bodvell his being Sick, but not knowing where to repair to him, he sent, and also went the Two and Twentieth March, One Thousand Six Hundred Sixty Two, to Mr. *Wynne*, and desired him to discover his Lodgings, who told him (having also sent him word formerly by his Servants to the same Effect), That Mr. Bodvell had only gotten a Cold, but was well enough, and was gone into the Country, where he Lodged, and desired to be private, when at the same time, and that very day he was in the extremity of his Sickneis in *Black-Fryars*; and that very day, and not before Dr. Cox was sent for to come to him, when he was past all probables hopes of Recovery; and saith, That Mr. *Wynne* would not permit his own *Apothecary* to be made use of, or any other fitting help to be used without much difficulty; insomuch, that the Doctor was induced to believe there was no fair Intention, either to the Deceased, or to the Heir; but deposeth, that he did then verily believe, and was fully perswaded, that all fallacious Arts, were by the said Defendant *Wynne* then used, by Fraud and Practice, to work upon Mr. Bodvells great weakness and extremity, to do some Act to the prejudice of his Heir; and yet when the said Doctor, upon this suspicion, did inquire of Mr. *Wynne*, how the Plaintiffs stood in the Affection of Mr. Bodvell, he protested, he knew of no unkindness in the World, and that all was well, and they stood right in his Affections. But Mr. Bodvell was a humorous man, and would go his own way, and desired to be private, and that none but *Wynne*, and one or two more should come near him; but never made mention of any Will or Disposition of his Estate, although it appears, that Mr. *Wynne* before that time, and six dayes before the Death of Mr. Bodvell, came to his Lodging, and did by the help of the Defendant *Griffith*, convey and carry away all Mr. Bodvells Plate, Jewels, and Evidences, which concerned his Estate against his Will: And of all these their Transactions, the Plaintiffs knew nothing, nor where Mr. Bodvell was, untill Doctor Cox, suspecting *Wynne's* Intention, did the Twenty Fourth of March, One Thousand Six Hundred Sixty Two, send the Plaintiffs Word where his Lodging was; and then the same Day the Plaintiffs went to see him, who did in his gesture express great pleasure at their being there, though he were not able to speak much to them; and the next day did declare to Mr. *John Wynne*, what comfort he took in the sight of them: And the Twenty Sixth of March when the Plaintiffs came again to see him, the Defendant *Wynne* being there, he caused him to be turned out of the Room, calling him *Rogue and Knave*, and would not be quiet till he was gone: and two dayes after, being the Twenty Eighth of March he dyed; which, as was enforced by the Plaintiffs Counsel, would not have been done, if he had not had a disaffection to him; and did argue, that he was betrayed into the re-publishing of the Will, as he was into the first making and publishing thereof, and did not know what he had done. And for further Evidence of the Truth of this, and that Mr. Bodvell was by the Subtily of Mr. *Wynne*, and the Combination and Contrivance of him, and the other Confederates, wrought upon in the time of his Infirmary and Distemper, after he was by Sickneis broke and impaired in his Memory and Understanding, to make and publish the pretended Will, contrary to his constant Declarations and Resolutions, in the time of his Health and better Understanding; and contrary to his Promise to Lord Privy Seal, and his Will thereupon made in August, One Thousand Six Hundred Sixty one: The Plaintiffs Counsel insisted, That there was no colour of Proof of Bodvells Intention to revoke that Will, or to alter the same, or to make any new Will for the Benefit of the Defendants, till the Sixteenth or Seventeenth of December, One Thousand Six Hundred Sixty Two, when he was very weak both in Body and Mind; nor no Proof then but by Pollard and Pugh, Persons of no Credit in this Cause. And further alleadged, which was also in Proof, that in January One Thousand Six Hundred Sixty Two, being the very next Moneth after the first publishing of the Will in question, he took that Distast at Mr. *Wynne*, and was in such passion, that *Wynne* was forced to avoid his

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Company, and run away from him for his security; and that after the making of the Will in *August*, One Thousand Six Hundred and sixty one, by which he had given all his Estate to the Plaintiffs *Sarah*, and *Charles Bodvel*, except some small Legacies; he did continue his Affection to the Plaintiffs, without the least colour or shew of any offence or prejudice, but rather of further kindness, and endearment, by the dutiful Carriage of the Plaintiff *Sarah*, which he did upon all occasions express as he did his ill Opinion and prejudice to the Defendant *Wynn*; who suspecting his Miscarriages might be made known, hath by the Defendant *Pugh* (who since the Death of Mr. *Bodvel*, boasted that he had thereby an Opportunity to be a Knave, and would be a Witne's for those that would pay him best and came and offered the Plaintiff *Roberts* to be for him, if he would pay him well, and is a Legatee and Confederate in this Practice) tampered with the House-keepers and Nurses at *Islington*, not to discover those feigned Names of *Smith* and *Jackson*, or that Mr. *Bodvel* did ever lye there, or the Condition he was then in; and did also tamper with other Witnesses, and offer them Rewards, to be for the Defendant, and against the Plaintiffs. And for further Evidence of the close Contrivance, in making and publishing the pretended Will, it was further insisted upon, that there was no Proof of any Instructions given by Mr. *Bodvel* for drawing this Will, nor that it was ever read by him, or to him; and it appeared, that there are no Witnesses to the first Publication of it, but onely *Pugh* and *Pollard*; although Mr. *Bodvel* were in a place where he might have had known Witnesses enough for the calling for; and it was very probable he was deceived in making of the Will: For, in *February*, meeting with *Parry*, he was so far from retreating that he made such a Will, that he told Mr. *Parry* he would see the Defendant *Wynn* hanged, before he or his Son should have a Foot of his Estate; Neither was there ever any further publication or mention of the said Will all *January* or *February*, One Thousand six hundred sixty two, when *Bodvel* went abroad, and was better in health, nor any notice taken of it, till the Nineteenth of *March*, One Thousand six hundred sixty two, being the time when Mr. *Bodvel* was again sick and in extremity, drawing towards his end; and then no Witnesses to the publication of it, but the Three that Mr. *Wynn* brought with him, though Mr. *Claherot*, and several Work-men and Servants of his were in the house at the same time; and it is not probable, that Mr. *Bodvel* should (had he not wholly been surprized) dis-inherit his Heir, and place the Estate in Trustees for two Infants, one a mean obscure Child called *Bodvel*, and the other Defendant *Wynn's* Son, called by the Will, *alias Bodvel*, never called so before, nor enjoined by the Will to call himself so hereafter; and no colour of Proof of the Infant *Bodvel*, being any way related to him, or of the Defendant *Wynn*, being any other than a very remote, if any Relation at all; although there was then, and yet living, many Heirs-Males of the Name and Family, and many near Relations descended from his Sister; And therefore, to have the said pretended Will set aside and made void, is the effect of the Plaintiffs Suit. But the Defendants Council insisting, that Mr. *Bodvel* was a Gentleman of a fair Estate, and was to have had five thousand pounds Portion with the Plaintiffs Mother; but was forced by her Friends to abate 2555 l. 2 s. 10 d. of it, to prevent the putting his Name into the Bill of Sale, for his Loyalty to his late Majesty. And that Mr. *Bodvel*, by the Settlement made upon his Marriage, did lye nothing upon his Daughters, but Five Thousand Pounds in Money, and that upon condition they married with his Consent, and reserved the power of his Lands to himself, not knowing but that he might have Issue Male by a second Wife; And by this Will had given 5000 l. Portion to this Daughter though she married without his Consent; but with a proviso, That she should not question his Will, or disturb or hinder his Executors in Reception of the Profits of the Lands thereby devised. And it was further Justified, That the Marriage of the Plaintiff *Sarah* was in One Thousand six hundred fifty seven, but there was no reconciliation or correspondence till One Thousand six hundred sixty, when *Charles Bodvel Roberts* was born; at which time the Lord Privy Seal being in great Place, and Mr. *Bodvel* might apprehend his displeasure might be prejudiciall to him (especially being prosecuted by his Wife, who had gotten all his Estate under Sequestration for Alimony), And it concerned him to manage his business with what privacy he could, it appearing by the proofs on the Defendants part, That Mr. *Bodvel* had so great a prejudice towards his Wife, that he said he would be torn in pieces with wild horses, and that *Olivers* Red-Coats should have his Estate, before ever he would be Compelled to make any Settlement of his Estate on his Issue Female: And some proofs was also Read on the Defendants part, to make it appear that Mr. *Bodvel* had long Acquaintance and Friendship with Mr. *Wynn*, and of the Kindred and Relation between them, and of the affection he had towards Mr. *Wynn*, who writ him a Letter when he was in the Isle of *Man*, and sent him notice that his Name was to be put into the Bill of Sale; which if it had been discovered, might, as was alledged, have been of dangerous consequence to Mr. *Wynn*, upon whom Mr. *Bodvel* did repose so much trust, that he made him

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a Referee in the matters in difference between him and his Wife. And the said *Wynne* supplied him with, and was bound with him for money, and bayled him when under Arrests; and did also at the death of his Daughter *Elizabeth*, send him and his Children Mourning. It being further urged on the Defendants part, That Mr. *Bodwell* had a greater affection for his Daughter *Elizabeth*, then the Plaintiff *Sarah*; and yet by the Will in *August*, One thousand six hundred sixty one, which the Plaintiffs do seem so much to rely on, *Elizabeth* is more disinherited than the Plaintiff is by this Will, there being a Portion of Five Thousand pounds appointed by this Will to the Plaintiff *Sarah*, which was a liberrall Provision from the said Mr. *Bodwell*, who had no kindness or affection for the Plaintiff Mr. *Roberts*, inso much, that he did avoid having any discourse with him, and did never make use of *Rowland Lewis* his Apothecary, after his bringing a Letter from him; and there were severall of the Witnesses to the publishing of the said Will: Also Read on the Defendants part, to prove that Mr. *Bodwell* was of good Memory and understanding at the making and publishing of the Will. And for further evidence thereof, severall Letters and Accounts about that time under Mr. *Bodwell*'s own hand were produced and read in Court; and the Defendants Council to acquit *Wynne* from any practice or circumvention in gaining the Will, further justifying, That Mr. *Wynne* did not draw or give Instructions for drawing the Will, nor did ever sollicite or endeavour to persuade Mr. *Bodwell* to settle his Estate on him, or his Son, and if the Will had been by his Contrivance, he would have chosen a better Partner, than young *Bodwell* to joyn with him in Defence of the Title. And the Defendants Council also offered to read the Defendant *Pollard*, who with *Pugh* and *Griffith* had been examined, *de bene esse*, by Order to prove the Will; but it appearing that *Pollard* was not onely a Party concerned in point of Interest, having by the Will an Annuity of ten pounds *per annum*, and not disclaimed by Answer, but was also guilty of the Confederacy in obtaining the Will: The Court declared, they could not admit him to be a competent Witness, or to be read; and although *Pugh* were admitted to be read, in regard he had disclaimed by Answer; yet no Credit was given to his Testimony, for that he had made himself a Party concerned in the Practice, and had also tampered with the Plaintiffs Witnesses. Now after the said Cause had received a long and full Debate and Hearing, and severall Presidents have been read on the Plaintiffs part: And the Lord Chancellor, and the Lords the Judges, having conferred about the Cause, the Lord High Chancellor declared his Opinion to be, That he did not conceive it of any value or consequence, that the Defendants, for whom the Estate is settled in the Trustees were Infants, and not privy to the Fraud; for if that should be admitted to barre the Heir from Relief, any third person might for the advantage of his Children or Relation, by practice set up a Will or Deed, and put it out of the power of the Court, to set aside or make void such Will or Deed. And his Lordship was by no means of Opinion, that the making of this Will was, as was insinuated by the Defendants Council, an Act of Prudence or Honesty in Mr. *Bodwell*, but rather of great Injury and Injustice, the same tending to disinherit an Heir and onely Child, being innocent, without any colour of offence or fault and to introduce Strangers, without any reason of Affinity or merit, that might induce him to this Act. And though there were great differences between Mr. *Bodwell* and his wife, yet his Lordship declared, that it was evident by the Proofs, Mr. *Bodwell* did always intend, even when those differences were at the highest, to leave his estate to his daughters, if they married with his consent; and that there was no colour to say Mr. *Bodwell* was displeased by reason of any hard usage from his Wives friends, whereby he should be forced to release a great part of his portion; for it was fully proved, that the whole Marriage Portion and Interest were fully payd, wanting 15 l. 4 s. And his Lordship further declared, that although the Marriage of the Plaintiff *Sarah*, without Mr. *Bodwells* consent, was an high Trespass. Inso much, that if his passion had possesed him from that hower, and he would have resolved to punish it with a totall disinherozin, his Lordship would not have relieved her: nevertheless, it did now fully appear, that he was reconciled to the Plaintiffs, before the time of his Majesties Restoration, and within some few moneths after the Marriage, and was well satisfied in the Match, and that his Daughter had chose nobly, and much for her advantage, which was at all times, and upon all occasions, confirmed by many Circumstances, and passionate expressions, and that his full intent was, to settle his Estate on the Plaintiffs, as the Will which he made in *August*, one thousand six hundred sixty one, did sufficiently evidence. And his Lordship declared, that it was plain, that Mr. *Bodwell* had no intention by the Fines, to revoke the Will, but onely to secure his Daughter against the practice of the Mother, as he feared, to set up an Issue Male; neither was there the least Colour or pretence of any alteration of the said good affections, untill *December* 1662. when he was fallen into the hands and possession of Mr. *Wynne*, who it appeareth, hath been the chief Agent and Contrivor in obtaining that Will. And all other the Confederates were his Agents,

and

and imployed and moved by him, and as appeares, have used great Art and Industry in gaining the Will, during the weaknes and infirmity of Mr. *Bodvell*; it was evident, that what disgust Mr. *Bodvell* received against the Plaintiffs, was from the false Informations of *Wynne*, that the Plaintiffs did joyn with his Wife in the prosecution against him, as Mr. *Bodvell's* own Letters do justifie, yet not the least of any such thing could be made good by the proofs, although the Defendant hath endeavoured that by examining severall Witnesses to this particular; but the contrary did plainly appear, that the Plaintiffs were not at all concerned, but so averse from it, that they made themselves strangers, and did not come near the Plaintiff *Sarah's* Mother, because they would not intermeddle, or give countenance to that prosecution; and yet Mr. *Bodvell* was made believe by the Defendant *Wynne*, that they did joyn in it. And his Lordship declared, that he believes Mr. *Bodvell* used all those termes of reproach, which have been read out of the proofs against the said Defendant *Wynne*, for whom it appeares he had no great kindness or affection, and that Mr. *Wynne* was a man of great dissimulation, and of no merit at all towards Mr. *Bodvell*, it being clear by the proofs, that Mr. *Bodvell* made no use of *Wynne*, in the time of his Sequelration, nor did *Wynne* run any hazards by writing to *Bodvell*. And therefore his Lordship was totally unsatisfied with Mr. *Wynne's* carriage in this business. And that it was very foul and unjust to disinherite an Heir, and defraud the Plaintiff Mr. *Roberts*, and the Lord Privy Seal, who upon the overture and promise of Mr. *Bodvell*, to settle his Estate on his Daughter and her Heirs, was induced to make the settlement of 3000 l. *per annum*, on the Plaintiff Mr. *Roberts*, and his Issue by *Sarah* his Wife, which did carry in it a great circumstance of equity against the pretended Will, although there was no such formall Agreement executed, which according to the course of proceedings, could in equity be ground enough of it self for a Judicall Decree against the said Will, which appeared throughout, both in respect of the person made use of to draw it, the Witnesses to it, and the times and places, and manner of publishing it, to be gained by foul practice and contrivance of Mr. *Wynne*, and his Confederates (without any reason of merit or affinity in Mr. *Wynne*, or the other Defendants, that should prevail with Mr. *Bodvell* to do it), and being contrary to his former intentions for the Complainant *Sarah* and her Heirs, their advantage; for whom it appeared, *Bodvell* had a continued affection: Wherefore his Lordship, with the Lords the Judges, were all clear of Opinion, That the said Will was obtained by great Fraud, foul Practice, and Circumvention of the Defendants, *Thomas Wynne*, *Pugh*, and *Pollard*, and other his Agents and Confederates. But by reason the President now Read, did not fully reach to this Case, whereby there might be a Decree, without creating a President; which if any one President had done, his Lordship declared, He would have Decreed the Cause: Therefore his Lordship, and the Lords the Judges held not fit at present to pronounce a Decree finally to determine this Cause; yet declared, That there did appeare so much of Fraud, Practice, and undue Proceedings in the Defendant *Thomas Wynne*, and his Confederates, in gaining the said Will; and so much of Equity and justice in the Plaintiffs Cause, that they would not dismiss the Plaintiffs Bill, or give any Relief to the Defendants upon their Bill, wherein they were Plaintiffs; neither would they leave the Defendants at liberty, to proceed at Law upon their pretended Will to evict the Plaintiffs out of their Possession. But the matter being fit to be relieved, and not yet ripe for a final Decree, this Court doth therefore give the Plaintiffs a years time to take such further course as they shall be advised, in what place, and in what manner their Counsel shall think most proper for their Relief and Reparation against the said pretended Will; and in the mean time, and untill further Order, the Injunction formerly granted in this Cause for stay of the Defendants Proceedings at Law, is to continue and stand in Force.

N. G. Intrat.

Will. Goldesbrough.

1664
Jan 21



Bodville's Case